



October 9, 2000

Ms. Phoebe Knauer
Deputy General Counsel
Texas Department of Protective and Regulatory Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2000-3867

Dear Ms. Knauer:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140657.

The Texas Department of Protective and Regulatory Services (the "department") received a request for several categories of information relating to the organization of the department, communications between the department and the Sunset Advisory Commission, and certain specified employment matters. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the representative sample of information that you submitted.¹

In raising section 552.103, you claim that the requested information relates to pending litigation between the department and the requestor. We note, however, that the information you submitted is a completed report, the public release of which is required under section 552.022(a) of the Government Code. Section 552.022(a) provides in relevant part:

- a) [T]he following categories of information are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law:

¹This letter ruling assumes that the representative sample of information that you submitted is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the information that you submitted. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Thus, pursuant to section 552.022(a)(1), a completed report is subject to required public disclosure unless it is expressly confidential under other law or protected from disclosure under section 552.108 of the Government Code. The department does not raise section 552.108. Section 552.103 is a discretionary exception to public disclosure that protects the interests of governmental bodies. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (discussion of section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law," for the purposes of section 552.022(a), that makes information expressly confidential. Therefore, information that is subject to required public disclosure under section 552.022(a)(1) may not be withheld under section 552.103. Accordingly, and as you do not claim that the information in question is expressly confidential under other law, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

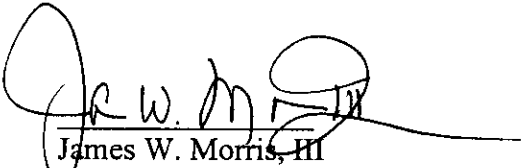
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 140657

Encl. Submitted documents

cc: Ms. Sandra Nemec
11251 FM 1105
Jarrell, Texas 76537
(w/o enclosures)